

Exhibit 45

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,
Plaintiffs,
vs. No. 18 Civ. 2949 (ARR) (RER)
XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,
Defendants.

-----x

VIDEOTAPED DEPOSITION OF
SEABRON ADAMSON
Tuesday, November 8, 2022
10:06 a.m.
Veritext
101 Arch Street
Boston, Massachusetts 02110

Laurie K. Langer, RPR

1 rate tied to the actual and estimated supply costs.

2 You know, when I buy a car from Ford I don't know
3 what Ford is making money off of it or not. I say
4 they're selling me a car. Right? So, I mean, I think
5 people would probably think, yeah, companies are in
6 business to sell products, sometimes profitably,
7 sometimes not. But, you know, the kind of on its face
8 provision says "supply costs."

9 Q. Does -- to you does that mean to the exclusion of
10 all other considerations?

11 MR. WITTELS: Objection.

12 A. I'm not sure I understand your question.

13 Q. Is it your opinion that the sales agreement, the
14 rate setting provision that we've been looking at
15 specifically, requires XOOM to consider its actual and
16 estimated supply costs when setting rates?

17 MR. WITTELS: Objection.

18 A. The contract says that the rate, we've read this,
19 is based on, I don't know what importance you're giving
20 to consideration. It says it has to be based on the
21 actual and estimated supply costs. What that says to me
22 is what's in the rate ought to be very closely tied to
23 supply costs and not include a lot of things that are
24 not related to supply costs.

1 speaking?

2 A. Almost 14 percent, I mean, it's not immaterial.

3 Q. Okay.

4 A. I don't know, I didn't write the word "generous."

5 Q. Those aren't your words?

6 A. No.

7 Q. Okay. Do you recall the graph in Mr. Coleman's
8 rebuttal report that shows gross margin for certain
9 companies in the Dow Jones?

10 A. Oh, the thing at the back?

11 Q. Yes.

12 A. Yes. Is it possible we can flip to that?

13 Q. Yes.

14 A. Tell me what page it is. Sorry.

15 Q. It's at page 13.

16 A. Oh, okay.

17 Q. Yes?

18 A. Okay.

19 Q. Do you have an opinion about which of these are
20 unreasonable gross margins, if any?

21 A. I mean, I --

22 MR. WITTELS: Object. Objection.

23 A. I mean, as I understand it these are a summary of
24 things he got from Yahoo; right? So these are

1 historical numbers; correct?

2 I mean, I interpreted his as being a summary of
3 historical data.

4 Q. I'm not sure, why are you referring to Yahoo?

5 A. In Footnote 28.

6 Q. I see. From finance.yahoo.com?

7 A. Yahoo.com is the website.

8 Q. Yep.

9 A. So I -- I interpreted this and, as a, a chart of
10 historical data for these other companies.

11 Q. Right. But the --

12 A. I mean, that's how I interpreted it. I hope I'm
13 right.

14 Q. Yeah, you're right.

15 The gross -- the reported gross margins for these
16 companies that are part of the Dow Jones Industrial
17 Average; right?

18 MR. WITTELS: Objection.

19 A. That's what I took this data to be, as reported
20 historical data, yes.

21 Q. Okay. And my question is which of these gross
22 margins, if any, do you believe are unreasonable?

23 MR. WITTELS: Objection.

24 A. I didn't -- I haven't expressed any opinion on

1 that. I haven't looked at any of these companies and I
2 did -- this is -- they would have to account for what
3 those businesses are and what, like, contracts they
4 have, or sign. I mean, these are -- I guess, Chevron is
5 at least an energy company. I mean, most of these are
6 software companies, or J&J, or Salesforce. I mean,
7 they're completely different businesses. I don't -- I'm
8 not quite sure I understand the relevance, but. I never
9 expressed any opinion about these data, which I assume
10 he has historical data.

11 Q. And I guess is your answer it depends on the
12 business and the contracts whether or not a margin is
13 reasonable?

14 A. To what extent the -- if there is to be a margin
15 is the margin charged under a contract would have to
16 refer to the contract. I take these to be gross margins
17 reported for generally very large corporations which are
18 mixtures of businesses, contracts, in entirely different
19 business.

20 So, for example, Amgen, which I believe is a
21 biotech company, without knowing a huge amount about it.
22 I mean, that's a very different industry with huge R&D
23 costs. Clearly the, the margins for an R&D oriented
24 company are going to be very different than for an ESCO.

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, ss.

I, Laurie Langer, Registered Professional Reporter
and Notary Public in and for the Commonwealth of
Massachusetts, do hereby certify that the witness whose
deposition is hereinbefore set forth, was duly sworn by
me and that such deposition is a true record of the
testimony given by the witness.

I further certify that I am neither related to or
employed by any of the parties in or counsel to this
action, nor am I financially interested in the outcome
of this action.

In witness whereof, I have hereunto set my hand and
seal this 11th day of November, 2022.



NOTARY PUBLIC

Commission Expires

7/27/2023